DOCUMENT RESUME

ED 310 438 CS 506 719

AUTHOR Bettig, Ronald V.
TITLE Critical Perspectives on the History and Philosophy of Copyright.
PUB DATE Aug 89
NOTE 40p.; Paper presented at the Annual Meeting of the Association for Education in Journalism and Mass Communication (72nd, Washington, DC, August 10-13, 1989).
PUB TYPE Speeches/Conference Papers (150) -- Historical Materials (060) -- Reports - Research/Technical (143)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Capitalism; *Copyrights; Federal Regulation; Marxian Analysis; Mass Media; Media Research; Patents; Qualitative Research; Theory Practice Relationship
IDENTIFIERS Cultural Hegemony; *Economic Theory

ABSTRACT

This paper situates the institution of copyright in the historical context of the rise of capitalism. The purpose is to provide a critical analysis of the philosophy of copyright and of the received history of copyright. A class analysis of copyright reveals the essential nature of copyright as the basis for the private ownership of intellectual and artistic creativity by the capitalist class. The paper concludes that in an age of increasing media concentration this private appropriation and ownership has serious implications for who participates in such creativity and who has access to its results. (One hundred three notes are included.) (Author)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED310438

CRITICAL PERSPECTIVES ON THE HISTORY AND PHILOSOPHY OF COPYRIGHT

(submitted to AEJ Qualitative Research Division)

Ronald V. Bettig
School of Communications
Penn State University
208 Carnegie
University Park, Pennsylvania
16802

CS506719

BEST COPY AVAILABLE

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Ronald V. Bettig
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☐ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

CRITICAL PERSPECTIVES ON THE HISTORY AND PHILOSOPHY OF COPYRIGHT

Ronald V. Bettig
School of Communications
Penn State University
University Park, PA

ABSTRACT

This paper situates the institution of copyright in the historical context of the rise of capitalism. The purpose is to provide a critical analysis of the philosophy of copyright and of the received history of copyright. A class analysis of copyright reveals the essential nature of copyright as the basis for the private ownership of intellectual and artistic creativity by the capitalist class. The paper concludes that in an age of increasing media concentration this private appropriation and ownership has serious implications for who participates in such creativity and who has access to its results.

Critical Perspectives on the History and Philosophy of Copyright

Historical analysis is inherent to the critical/institutional approach to the study of communications. The roots of the approach can be traced to the historical dialectics of Hegel and Marx. Marx grounded his dialectical analysis in historical materialism, which means situating the analysis of economics, politics, law, society, and culture in the larger context of the mode and relations of production. Following this method, I first briefly note the different notions of intellectual property in ancient times, feudalism and capitalism. Then I examine the evolution of the concept of copyright over time as it was idealized versus how it was put into practice in its early history in Great Britain and the U.S. Patterson stresses that such a historical analysis of copyright

> removes obstacles -- long-continued acceptance of certain ideas, self-interest, and the pressing need to resolved immediate problems -- which may be present when analysis occurs in a wholly contemporary context. [It also] provides the opportunity to compare the ideas of copyright and the problems to which those ideas were directed in origin and development with the ideas of the concept and the problems of today.[1]

As Ploman and Hamilton point out, nascent forms of copyright existed in ancient Greece, in the Talmudic principles of ancient Jewish law, and in Roman law.[2] In Roman society, for example, it was appropriate to attribute authorship and to compensate authors for use of their intellectual works. At the same time there were societies in which the concept of copyright was completely unknown. There continue to be societies today without copyright systems. Ploman and Hamilton argue that early societies without copyright include India, whose history is one of societies rather than persons and where 'who said what' was not important,

but rather 'what was said.'[3] Similarly in Bali, artistic property, in the sense of personal possession, could not exist since the production of culture was a community-oriented, participatory process. Thus artistic knowledge could not be centralized in the hands of a particular intellectual class.[4] As of 1988, the People's Republic of China does not have a copyright system, a reflection of the fact that the concept of intellectual property does not seem to have existed in the societies of the Far East. Ploman and Hamilton suggest that different cultural attitudes, social organization, and legal conceptions may explain why copyright emerged in the West and not in the ancient East.[5] Accordingly, the history of modern copyright is intimately connected with the early rise of capitalism, liberalism and printing in the fifteenth century.

In the European medieval period artistic and intellectual knowledge did become increasingly centralized and controlled by the Roman Catholic church. Still monastic chronicles and church music were not encumbered with property rights, because monks, who functioned equally as copyists, scholars, and authors, freely used and reproduced literary works. Authorship was attributed to the monastery as a moral person, but ownership was not necessarily claimed.[6] A secular trade in manuscripts eventually emerged in the 12th century, first in Paris, based on the reproduction of books mainly by classical authors. The stationer emerged in the 14th century, functioning as an early form of publisher.[7] Stationers acted as middlepersons between wealthy manuscript buyers and the scribes who did the copying. Stationers, as merchant capitalists, laid the foundation for the transformation of the book trade as they used their accumulated capital for investment in print technology and

manuscripts. As the printing press quickly proliferated throughout Europe the stationers were suceeded by or became printers, who at that time also functioned as bookbinders and booksellers, within capitalist relations of production (i.e., private ownership of the means of production and wage labor).

Johan Gutenberg, who began working on the printing press in 1436, holds the claim as the technology's inventor. However, to bring the technology into operation he required financing from a merchant capitalist named Johann Fust. Gutenberg mortgaged the equipment to Fust to secure the loans and ended up forfeiting his equipment when he could not repay them.[8] The relationship between Gutenberg and Fust is an example of nascent capitalism and an example of how merchant capitalists played an essential role in employing pre-existing technology in the process of valorizing capital. The first printed work by Gutenberg and Fust, was an extraction from the Bible. In publishing this "perennial 'best seller,'" Fust and Gutenberg were "hoping to tap markets for the Old Learning rather than the New,"[9] demonstrating as well the structural process by which capitalism appropriated existing intellectual creativity and, utilizing the new technolgoy, transformed it into the commodity form for the realization of surplus value. This required recognition and protection by the state of a property right in intellectual creativity.

Shortly after printing reached Italy in the 1460s the city of Venice granted the first printing privilege to a publisher. Laws regulating the printing/publishing trade became common in many European countries by the beginning of the 16th century. Early government regulation of industry in general took the form of patents. Governments granted patents in the book

trade that secured for printers exclusive control over the right to copy certain titles or classes of literary work. Such privileges served as favors or rewards to selected entrepreneurs in exchange for political loyalty and as a way of supporting infant industries through grants of monopoly over particular areas of production and trade. They also served to control who printed, and what was printed. Eisenstein concludes that the granting of these privileges to printers forced governments to begin to define what belonged in the public domain and what areas of literary creativity could be appropriated for private use and profit.[10] This brings us to the essential connection between intellectual property law and capitalism.

Patent and copyright laws supported the expansion of the realm of creative human activities that could be commoditized. Copyright, in particular, reflected the existence of newly developed print technology that allowed the 'fixing' of literary works in a tangible medium -- books -- that could be mass produced and then sold in the marketplace. As governments decided what printing privileges to grant to whom, the "literary 'common' became subject to 'enclosure movements'."[11] Intellectual property laws facilitated the private appropriation of intellectual creativity based upon socially-constructed knowledge and culture in the same way that property laws in general served as the basis for the commoditization of tangible goods. At the same time, copyright and patent laws legitimized the concentration of ownership of socially-produced use values existing in invention, art and literature in the hands of the emerging capitalist class. The evolution of copyright law in Great Britain reflects this process.

History of copyright in Britain

Print technology reached England in 1476 when the successful merchant capitalist William Caxton set up a printing press in the precincts of Westminster Abbey.[12] Other printers who followed in the City of London in the early 16th century joined the stationers guild, reflecting the close links between the paper trade and the book trade. The guild was eventually taken over by the printer/bookbinder/bookseller (or printer/publisher) and transformed in 1557 into the Company of Stationers.[13] For the next 150 years the Stationers' Company held a firm monopoly over printing and publishing (the exceptions being periods when the laws protecting the Company were allowed to expire and continual extra-legal publication). Only members of the company could secure government licenses to operate a printing press and the number of printer/publishers was limited.[14] These were granted in exchange for the company's policing of its members as well as pirate operations. Copyright and censorship laws emerged simultaneously out of the trade practices of this monopoly. It was a common combination found in laws applying to publishing throughout Europe (e.g., The French Act of 1529 regulated both printing and publishing).[15]

The Stationers' Company kept a registry in which member printer/publishers listed the titles of their publications thereby procuring exclusive rights to copy those titles. The right to transfer the copyright to another member was allowed. Only members of the Company could register titles and secure the copyright and they registered only those titles that were deemed by the members (or at times, government

officials) to be religiously and/or politically safe. Of course this dramatically affected who could publish and what was published. These trade practices were codified in the various licensing acts aimed at printing, including the Star Chamber Decrees of 1566, 1586, and 1637, the three acts passed in the 1640s during the Interregnum, the Printing Act of 1662, and the Licensing Act of 1692. All of these acts protected the economic rights of Company members. Nothing in them referred to the protection of authors' rights in their creative works. In summing up the crucial developments of the 16th century, during which the structure of the industry was established, Feather writes:

> By the end of the sixteenth century literature, in the broadest sense, had become a commercial commodity. The rewards of that commerce, however, were for the printer, publisher and bookseller rather than the for the author.[16]

As the printer/publishers neared completing the enclosure of public domain works from classic and medieval times, the importance of authors and authorship increased. The printer/publishers sought new and 'original' works to keep the presses running and to meet the demands of the expanding literate audience.

Patronage was the major form of support for authors throughout the 16th century. However, publishers also began paying authors for the right to copy and publish their works. Ploman and Hamilton conclude that these payments were not based so much on legal as economic grounds.[17] Publishers willingly paid for the best 'originals' that authors could produce as these found higher value in the marketplace. There seemed to be little question that authors should be paid for their manuscripts. Nevertheless, the prevailing attidude during this period was one of contempt for authors who wrote especially for publication. Williams cites

Goldsmith making the familiar qualitative judgment of the printing age as "that fatal revolution whereby writing is converted to a mechanic trade."[18]

By the end of the 17th century authorship was clearly becoming a way of making a living. Defoe could note in 1725 that

> Writing...is become a very considerable Branch of the English Commerce. The Booksellers are the Master Manufacturers or Employers. The several Writers, Authors, Copyers, Sub-writers and all other operators with Pen and Ink are the workmen employed by the said Master-Manufacturers.[19]

Thus intellectual and artistic creativity ceased being a collective endeavor by craft guilds, secret societies, or monasteries as they had been during feudal times. Instead, these activities became an individual pursuit conducted for personal recognition. Competition in the marketplace increasingly determined who could make a living in these professions. Here is the crucial link between libertarian theory and copyright. As literary and artistic works were progressively commoditized

> possessive individualism began to characterize the attitude of writers to their work. The 'terms plagerism and copyright did not exist for the minstrel. It was only after printing that they began to hold signficance for the author.'[20]

Both authors and publishers latched on to popular notions of natural rights as they sought to define the concept and practice of copyrights. Current scholarship on the history of copyrights attributes the development of authors' rights in literary creativity to John Locke and the labor theory of value laid out in the second of his Two Treatises of Government (1690).[21] However, it is by no means clear that Locke extended his labor theory of value, as applied to the production of tangible goods, to intellectual and artistic labor.

According to C.B. Macpherson, Locke built upon the theory of

possessive individualism intimated earlier by Thomas Hobbes.[22] What made Locke more palatable than Hobbes to the rising capitalist class was his retention of certain aspects of traditional moral law. 17th-century individualism conceived of the male individual as essentially the proprietor of his own person and capacities for which he owed nothing to society. Locke began with the assumption that "the earth and all inferior creatures [are] common to all men" in the state of nature but then develops his labor theory of value to justify the private appropriation of the common wealth of nature. Since every male individual is the proprietor of his own person,

> [t]he labour of his body and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided and left it in, he hath mixed his labor with, and joined to it something that is his own, and thereby makes it his property.[23]

For Locke however, this natural right to property did not belong to servants (wage laborers) who had to sell their labor to survive. Wage laborers alienated their natural right to own the products they worked up when they contracted to labor for someone else.[24]

Inherent to the notion of private property is the right to exclude others from using it. It is clear that the forms of property Locke was referring to were "the fruits of the earth and the beasts that subsist on it [and] the earth itself."[25] It is not apparent that Locke extended private appropriation to the realm of inventive, artistic or literary creativity. In fact, in one crucial passage Locke notes that "invention and arts", when applied to the process of appropriation from land and nature, allow one to increase one's private property holdings but nothing is mentioned here, or elsewhere, about the private ownership of these same

"invention and arts."[26]

It is therefore doubtful that Locke had intellectual creativity in mind when articulating his labor theory of value. Still, the argument of the author's or inventor's natural property right as a result of such labor proved expedient to British publishers as they sought to preserve their exclusive copyrights. The most valuable aspect of this theory for capitalists is that while the individual is proprietor of his own person which he cannot alienate, he is free to alienate his capacity to labor,

> [f]or property in the bourgeois sense is not only a right to enjoy or use; it is a right to dispose of, to exchange, to alienate.[27]

Publishers argued, at the beginning of the 18th century, that since authors had a natural copyright in their works as a result of their creative labor, the transfer of the right to copy to the publisher gave them a license in perpetuity to publish and profit from the work.

Feather shows how a small inner circle of copyright owners in the Stationers' Company, holding dozens of valuable copies that they had been inheriting and purchasing since the 1590s, gained control of the British publishing industry in the mid-17th century. They exercised their power inside the Company until its decline in the 1690s, and after that, used their control over copyright to maintain their substantial share of revenues generated in the book trade.[28]

The decline of the Company came with the general assault on monopoly privileges that were associated with aristocratic authority. The inner circle of the Company operated in classic monopoly fashion, buying up all of the rights to copy books, colluding among themselves to limit competition, and charging monopoly prices for books (prices higher than those that would exist in competitive markets). Parliament refused to

extend the licensing system into the 18th century when it allowed the Licensing Act of 1662 to expire in 1694, seeking in part to end the monopoly in the book trade.[29]

The publishing monopoly took recourse in two different ways in order to prevent competition from pirate publishers. These had been developing prior to licensing expiration due to continual interruptions in protective legislation since the mid-17th century and continued piracy. One marketing response was to set up an exclusive wholesale distribution system, tying wholesalers to the dominant publishers and copyright owners. The other strategy of the industry was based on law: to continue to defend its copyrights, still claimed in perpetuity, through civil action. The distribution system offered only partial protection and

> the courts were slow, expensive and unsympathetic to the few members of the trade who went to Chancery to take civil proceedings against those who infringed their rights.[30]

Consequently the members of the industry began seeking some form of statutory protection and argued for it in a petition to the House of Commons in 1707.

The petitioners -- the copyright-owning publishers, a few printers who still owned valuable copyrights, and the wholesalers tied to the monopoly -- sought legal protection for their copies and finally secured it in April 1710 in the 'Act for the Encouragement of Learning and for Securing the Property of Copies of Books to the Rightful Owners Thereof' (known as the 1710 Copyright Act or Statute of Queen Anne).[31] It is commonly cited as the first modern copyright law. The key phrase of the Act is 'encouragement of learning' which subsequently has become one rhetorical rationale for copyright. However, in this Act the phrase

pertained not to copyright in general but specifically to that section of the Act that allowed importation of books in classical and northern languages -- a concession by the petitioners who saw no threat in the provision. The Act also terminated the 'explicit' connection between copyright and censorship by extending the copyright to any published work.[32]

The Act granted copyright protection to existing titles in the Stationers' Register for 21 years, and 14 years for any entries after the Act took effect with a possibility of a 14-year extension beyond that. It was not clear whether the work would go into the public domain when the statutory periods were over or whether perpetual rights were retained at common law. Ploman and Hamilton sum up the provisions of the Act this way:

> ...the Statue concerned the right to copy and no more. The protection afforded was against the piracy of printed works. There was nothing in this Statute that touched upon the creative or moral rights of the author. The right protected was a property right.[33]

The Act therefore had the immediate effect of benefitting the publishers. But its very existence, though this was not the original intent, ultimately confirmed authors' natural right of copyright ownership at common law.

The campaign to gain recognition for authors' copyrights was most effectively led by the publishers themselves. The publishers realized that when the statutory terms of copyright protection expired they risked losing their valuable monopoly privileges. Thus they promoted the author's natural right, based loosely on Locke's labor theory of value, believing that once the author's natural right of ownership was recognized he or she could transfer that right to the publisher who then could claim

a license in perpetuity. The counter argument was that copyright could only be granted by statute.

Two important legal proceedings ensued to sort out the conflicting claims made for copyright. In the first case, Millar v. Taylor (1769), the House of Lords recognized the common law right of authors, thus supporting the publisher's view that saw permanent copyrights. The House of Lords heard the second case, Donaldson v. Beckett, in 1774, and while recognizing the author's natural copyright at common law, decided that the 1710 Copyright Act supplanted this right with a statutory right. In the Anglo-American tradition, copyrights are governed by statute and once a work is published it becomes subject to the limits on the monopoly existing in statutory law. The Donaldson decision seemed to have the intent of breaking up any system of long term monopoly of copyrights by the printer/publishers and in effect did break the monopoly of the small group of copyright-owning publisher/booksellers (and the few copyright-owning printers that remained). At the same time the decision contributed to the emergence of the publisher as the dominant figure in the book industry.[34]

A class analysis of copyright relationships

This history of the British publishing industry and the development of copyright demonstrates the essential function of copyright as an economic right of publishers. The incorporation of elements of an author's right into copyright principles has since obscured the separate interests of authors and publishers. A class analysis of the relationship between mass media/copyright owners and actual creators of art and

literature makes these separate interests clear at once. The outline for this analysis comes from Bowles and Edwards definition of class:

> A class is a group of people who share a common position in the economy; specifically, a common position with respect to the production and control of the surplus product.[35]

The three important aspects of this definition stressed by Bowles and Edwards are: first, that classes exist in relationship to one another; second, that this relationship refers to the labor process and the position that individuals occupy in the process, not income or a subjective self perception of or categorization by individuals themselves of their status; and third, class relations are hierarchical.[36] The result of this hierarchy is that actual creators of a product produce more than they get, while the class on top gets something that it did not actually create. Such class relationships and control of the labor process and surplus are "usually expressed legally in a set of property rights."[37] Together the class relationships and their legally expressed property rights "may be thought of as a set of rules governing economic life."[38] The focus here is on these class and property relationships in the mass media sector of the economy.

The book publishing company or the film production company, as owner of the means of producing culture and information products and as owner of capital necessary for investment, purchase the labor of authors, artists, and craftspersons. As employers, the companies are entitled by law to any copyright in the work of those they directly employ under the 'work-for-hire' doctrine.[39] Marx and Engels identified this transformation process of intellectual activities into wage labor in the Communist Manifesto:

> The bourgeoisie has stripped of its halo every occupation hitherto honored and looked up to with reverent awe. It has converted the

> physician, the lawyer, the priest, the poet, the man of science, into its paid wage-laborers.[40]

In describing the process this way in the mid-19th century Marx and Engels may have exaggerated the actual subjugation of what Bowles and Edwards call "the old middle class" to wage labor.[41] This class has generally owned capital goods in tools or 'professional' knowledge, does not generally control the labor of others, and is generally self-employed (examples of such occupations include doctors, carpenters, family farmers, mom and pop storekeepers, artists, lawyers, etc.). But 120 years or so later the extent to which the old middle class in the U.S. is being transformed into wage labor (salaried or not) is accelerating. Doctors are increasingly employed by Health Maintenance Organizations or hospital groups;[42] lawyers are employed by large corporations and law firms or are integrated into legal insurance schemes (such as the Amoco plan where monthly credit card payments entitles one to legal advice and service); mom and pop stores of all kinds continue to be replaced by national retail chains; the family farm has been almost completely absorbed by agribusiness; and so on.

In the realm of literary and artistic creativity, the actual creators of the copyrighted work lose control over their product and are separated from it when copyright protection becomes exclusive for the owners of capital. This is the case whether they 'work for hire' or as free lancers who transfer their copyrights in order to get their manuscripts published (in the broad sense). As Morawski states,

> For the most part, the product may not be kept, used, enjoyed, or distributed by the [actual creators]. <u>Disposal of the product is at the discretion of owners of capital</u> who have organized its production and marketing. Profit is the aim.[43]

Thus with this exclusive control, the copyright owner decides where and when to distribute the artistic or literary work to achieve the highest possible return on capital invested.

The impact of this alienation affects the nature of the creative process and human individual and species potential.[44] The risks brought on by competition encourage those commonly identified practices produced by the media marketplace such as formula, star systems, spin-offs, commercial tie-ins, etc. that channel, or even limit, creative initiative and experimentation. As a result of these marketplace constraints, individual creators who produce cultural products for a living are not able to explore the full range of their ideas and abilities. At the same time rules governing processes of production, for example the news media's practice of "objectivity," are themselves alienating as they deliberately attempt to thwart individuality or class consciousness. This hegemony in the production process results in culture and information products that in turn reinforce the hegemony of the upper class and aligned factions. It makes actual creators complicit in their own domination.[45]

For nonprofessional artistic and literary creators in a capitalist society, it means engagement in such creative activities on the side, should they find the time, surplus income and energy. Both of these processes, the distortion or thwarting of creative potential in professional artists/authors and in the rest of society, are attributed by Marx and Engels in the German Ideology to the capitalist division of labor.

> The exclusive concentration of artistic talent in particular individuals, and its suppression in the broad mass which is bound up with this, is a consequence of the division of labour...[The result is] the subordination of the artist to local and national narrowness,

> ...and also the subordination of the artist to some definite art, [so that] he is exclusively a painter, a sculptor, etc., the very name of his activity adequately expresses the narrowness of his professional development and his dependence on the division of labor...[46]

At the same time the professional class of artists, writers and intellectuals have separated themselves from the rest of society by claiming the activity as their own exclusive domain. They base this, first, on the claim of unique ability to represent or describe some external reality in a way that can only be grasped by art, and second, on the grounds that artists are unique human beings who are able to create in a manner autonomous from the constraints of society.

Marx and Engels were among the first to debunk this myth of expertise and autonomy with the example of Raphael.

> Raphael as much as any other artist was determined by the technical advances in art made before him, by the organization of society and the division of labour in his locality, and, finally, by the division of labour in all the countries with which his locality had intercourse.[47]

Similarly, Raymond Williams spends the first part of The Long Revolution demystifying the nature of artistic creativity. He agrees with Marx and Engels on the extent to which art and artists are socially determined. He writes:

> Since the individual grows in relation to a learned pattern, which is of social significance, the assumption of autonomous creation -- the creative individual acting wholly freely -- is misleading and naive.[48]

Williams ends up rejecting both the views that art belongs exclusively to the artist and that it is only through art that external reality can be represented or described. He posits instead the view that all human beings are involved in making 'reality:'

> that reality as we experience it is in this sense a human creation; that all our experience is a human version of the world we inhabit.[49]

In this effort, Williams is bringing art down from its autonomous and exclusive perch to be included with human activity in general. While this can be done intellectually, Williams again agrees with Marx and Engels that art cannot become an activity where nonprofessionals can fully explore their individual talents and potential unless there is a radical restructuring of society and the division of labor. They are talking, of course, about a socialist or communist society; one in which, once the basic material needs of individuals are met, there would be sufficient leisure

> so that what is really worth preserving in historically inherited culture -- science, art, forms of intercourse -- may not only be preserved but converted from a monopoly of the ruling class into the common property of the whole of society and may be futher developed.[50]

Here again is the crucial link between copyright and human artistic and intellectual creativity and development. Copyright preserves the monopoly that Marx and Engels are describing. It is, as I have identified, the basis for the private appropriation of such activity from the realm of socially-created ideas and images. This produces a tension between society and intellectual property owners recognized early by Proudhon:

> Just as real and personal property is essentially hostile to society, so, in consequence of literary property, social and individual interests are perpetually in conflict.[51]

This is because, Proudhon continues, capitalist

> society has made the fine arts, like the rudest industries, objects of consumption and exchange, governed consequently by all the laws of commerce and political economy.[52]

Proudhon too suggests that a different type of socio-economic order is necessary in order to liberate every individual's artistic and creative potential. In Marx's vision, communist society would provide such

opportunity.

> In a communist organization of society there are no painters; at most there are people who, among other things, also paint.[53]

The argument here is that the capitalist division of labor that confers professional status on artists and authors must be challenged.[54] Most artists and writers are "worker-artists" or "worker-writers" anyway, i.e., they support themselves for years, or perhaps even their lifetime by nonart work. And of course, these worker-artists or worker-writers are mostly likely to be women, minorities or members of the working class. Those artists, actors, writers and other creators who actually make a living from these activities are the exceptions.[55] For example, a Columbia University study for the Author's Guild in 1979 found only 1003 'full-time' authors in the U.S. and barely more than 1000 'part time' authors.[56] Perreault, an art critic, concludes that for professional artists -- those who are making a living from art gallery exhibitions -- it is often a matter of luck "or the result of hucksterism and/or the artist's bowing to the market."[57]

This is why the vision of artistic activity in a communist society is so compelling. It implies eliminating the division of labor, and the resulting inequality, that determines who can participate in the creation of cultural products in capitalist society. It implies that art and literature ought to be produced with much less regard to the market and much more out of personal and social need. It also recognizes the ever-increasing social nature of the production of art. It is clear once we move beyond the painting, sculpture, or literary works -- all forms of individual authorship -- which were the dominant modes of artistic and intellectual expression during the early history of copyright, that today

most cultural activity and/or creativity is the product of teams of worker-creators (e.g., the motion picture or television program, the Time magazine article, the Associated Press wire release, the musical recording and performance, a play, dance performances, sports, etc).

Given the social nature of artistic and other forms of cultural creativity a revolutionary response to the particular capitalist organization of these activities requires two steps. The first step is challenging the capital-labor relationship through the reappropriation of the results of such creativity by actual creators. The next step would be the abolition of professionalism in these activities and the reconstitution of the intellectual commons from which individuals and groups could freely draw as they strived for fulfillment of their human creative and artistic potential. Thus abolishing capitalist exploitation of labor is only the first step. It is then necessary to move beyond the Lockean premise retained in traditional Marxism "that civilized man is continually in a state of nature, with a right to what he produces."[58] As Cook points out this strand in Marxism has

> tended actually to hide the full implications of socially created values; to prevent adequate development of a wider and more profound ethic of social justice and, to introduce into socialist doctrine an essentially individualist element, based less on real needs and uses than on individual acquisitiveness.[59]

The idea of resurrecting the intellectual commons, the deprofessionalization of cultural production, the recognition of the social nature of artistic, literary and intellectual activity, and the realization that these activities are among those ways in which humans constitute their 'reality' allow us to move beyond Locke in socialist theory and, ultimately, practice.

Origins and development of U.S. copyright law

Before moving ahead with this history and philosophy of copyright, it is necessary to note here that copyright developed with a somewhat different focus on the Continent than in Britain, particularly in the area of natural rights. In France, the concept of the author's moral rights to own, to alter, and to protect the integrity of a work, and to his or her reputation in relation to the work were retained in statutory law. Hence these rights could not be transferred to the publisher. French law recognized the right of the author to control public performances in 1791 and the right to copy and reproduction in 1793. Moral rights of authors and other artistic and intellectual creators have been protected in French copyright up to the present.

In a sense, French law permits the transfer of the economic rights to publish or public performance, but not the author's personal identification with a work. It is still rooted in the Lockean version of liberalism as one can alienate one's labor, but not one's person or personality. Thus the basic capital-labor relationship remains the same. For similar protection of these moral rights, U.S. creators must seek action under

> a veritable cornucopia of American jurisprudence, including the law of defamation, privacy, unfair competition, breach of contract, common laws and most recently, the Lanham Act.[60]

U.S. law follows the British legal tradition that posited copyright as an economic right and does not explicitly define a set of moral rights of actual creators as does French copyright law. Indeed, U.S. copyright law descends directly from the legal theory and practice established in

Britian as demonstrated by the wording used to codify the U.S. laws, the mechanisms by which copyright was procured, and the legal decisions drawn on by U.S. courts to define copyright.

The General Court of the Massachusetts Bay Colony enacted the first recorded copyright statute in the U.S. in 1672.[61] It forbade printers from printing up more copies than agreed to by the owner of the copy, or to reprint or sell the same without the owners explicit consent. In referring to "owners" the statute could have applied to both copyright-owning publishers or authors therefore providing broader protection than British copyright practices of the time. The Continental Congress passed a resolution in 1783 recommending that the individual states secure to "authors and publishers of new books the copyright of such books."[62] Twelve of the original U.S. states, except Delaware, passed copyright laws between 1783 and 1786. These were generally based in language and in form on the Statute of Anne. According to Ploman and Hamilton the goals of these statutes, in order of importance, were:

(1) to secure the author's right;
(2) to promote learning;
(3) to provide order in the book trade;
(4) to prevent monopoly.[63]

The preambles to the acts reflect these goals. They also contain an explicit connection between creativity, profit and social welfare. For example, the Connecticut "Act for the encouragement of literature and genius," of 1783 mandated

> that every author should be secured in receiving the profits that may arise from the sale of his works, and such security may encourage men of learning and genius to publish their writings; which may do honor to their country, and service to mankind.[64]

Similarly the Massachusetts 1783 copyright act detetermined that in order

to encourage "learned and ingenious persons in the various arts and sciences...to make great and beneficial exertions of this nature,' there "must exist legal security of the fruits of their study and industry to themselves."[65] This act also grounds the statute in Locke's natural rights theory stating that

> such [legal] security is one of the natural rights of all men, there being no property more peculiarly a man's own than that which is produced by the labour of his mind.[66]

Not all the state copyright laws appealed to natural law. The Pennsylvania version passed in 1784 aimed instead at halting the practice where printers or booksellers print, reprint and publish books without the consent of the "authors or proprietors" of copyrights "to their very great detriment" and "damage" to their families.[67] South Carolina and Virginia extended copyright protection to booksellers and printers who "have purchased or acquired the copy or copies of any book or books" in order to print or reprint them.[68]

Two types of 'limits' on copyrights are found in these statutes. The first is the limit on the duration of the term of protection, varying from an initial period of 14 to 21 years for different states, with some states allowing renewal for an additional 14 years by authors, 'their heirs or assigns.' Five states had limits on the copyright monopoly in the form of a 'just price' condition.[69] If the copyright owner, author or publisher, set an unreasonable price on any book, i.e., above the costs figured for labor, expenses and risk, the court could in fact set a reasonable price. Similarly if a copyright owner attempted to limit the supplies of a work the court could grant a license to publish the work to another, for example, to the petitioner making these charges. This

'limit' on the copyright monopoly recognized that exclusive rights can backfire and actually hinder access to published works.

All of these statutes required registration of copyrights with local courts as the basis of protection and possible litigation. Pirates were punished by forfeiture or destruction of all infringing copies and by fines levied on a per-page basis. Despite the underlying principles and explicit rhetoric of natural rights, these statutes served to protect the author's or publisher's copyright from piracy for a statutorily determined length of time. But since it was publishers who had the capital to bring the book to the marketplace and such publication was necessary to secure copyright protection, copyright continued in its early U.S. form to function much like the Stationer's copyright, i.e., as a publisher's economic right. The author's right to authorize the display, public reading, translation, alteration or derivation after publication was not recognized.

The separate state copyright statutes could not be enforced very successfully, as each had a different set of registered copyright works of local authors and publishers. It was clear that a national system of copyright was necessary for the purposes of enforcement and support of a national book trade. In this regard James Madison wrote in the The Federalist:

> The utility of this power will scarcely be questioned. The copyright of authors has been solemnly adjudged, in Great Britain, to be a right of common law. The right to useful inventions seems with equal reasons to belong to the inventors. The public good fully coincides in both cases with the claims of individuals. The States cannot separately make effectual provision for either of the cases, and most of them have anticipated the decision of this point by laws passed by the insistence of Congress.[70]

Madison's efforts led to the adoption of the copyright and patent clause

in the U.S. Constitution which reads:

> The Congress shall have the power ... to promote the progress of science and useful arts, by securing for limited time to authors and inventors the exclusive right to their respective writings and discoveries.[71]

The clause emerged out of a set of proposals -- one by James Madison and one by Charles Pinckney -- that aimed at nation-building through the promotion of science and learning by authorizing Congress to:

> grant charters of incorporation in cases where the public good may require them;
>
> establish a university;
>
> encourage by premiums and provisions, the advance of knowledge and discoveries; and
>
> establish public institutions, rewards, and immunities for the promotion of agriculture, commerce, trade and manufacture.[72]

These proposals reflect the role that the national government would play in supporting the rise of national industry within the context of competitive capitalism in the U.S. The rewards and monopolies had much the same function as the patents granted by governments earlier in Europe out of which copyright emerged, i.e., to support the development of infant industries. Thomas Paine similarly recognized the the link between protectionism and the national development of literature:

> It may, with propriety, be remarked, that in all countries where literature is protected, (and it never can flourish where it is not), the works of an author are his legal property; and to treat letters in any other light than this, is to banish them from the country, or strangle them at birth.[73]

Paine's Common Sense, of course, was one of the first 'best-sellers' produced in the U.S. (which is not to imply that Paine himself participated in 'competitve capitalism;' rather, his utopian political vision was based on an artisanal republicanism, constituted by artisans

and craftspersons).[74]

Madison, for one, was sensitive to the power of such exclusive rights from his knowledge of the European history of patent-based monopolies. He felt, however, that the public and individual interests were commensurate in the U.S. system of intellectual property as long as copyrights were broadly held by authors and for a limited time. On this matter he wrote to Thomas Jefferson,

> Monopolies are sacrifices of the many to the few. Where the power is in the few it is natural for them to sacrifice the many to their own partialities and corruptions. When the power as with us is in the many not in the few the danger cannot be very great that the few will be thus favored.[75]

In this passage Madison sounded much like Jefferson who advocated the broad distribution of landed property in order to sustain an interested and democratic body politic. Both implied that the concentration of property would undermine such a system. Madison failed to see that this would happen not as a result of an authors' monopoly over copyright but rather due to concentration in the publishing industry.

Congress followed up on the Constitutional mandate adopted in 1789 and passed the first Federal copyright law in 1790.[76] The Act of 1790 was entitled

> "An Act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned."

Here it adopted the language on 'learning' from the Statute of Anne which, as I pointed out, was not actually related to the notion of copyright but to the importation of books. The Act provided protection only for the created statutory term and did not sanction an existing, perpetual copyright in an author's work. It granted the U.S. author or his or her

heirs or assignees "the sole right and liberty of printing, reprinting, publishing and vending" of such works. The Act stated explicitly that it did not intend to prohibit publication and sale of works in the U.S. that were first written, printed, or published abroad.[77] Ploman and Hamilton conclude that with this piracy provision the Act

> can be viewed as the action of a developing country to protect its burgeoning culture while exploiting the cultural products of more developed nations.[78]

However, it was not immediately clear after passage of the Act, whether the author's natural right at common law had been supplanted. The notion of natural rights in inventive and intellectual creativity was losing its resonance by the early 19th century. Jefferson questioned such natural rights in invention and ideas in a letter to Isaac McPherson (1813). Here Jefferson held property rights as statutory rights and began by noting that "[s]table ownership is the gift of social law."[79] He then went on to identify the social nature of ideas, where once an individual divulges an idea "it forces itself into the possession of every one."[80] Due to this nature of ideas it seemed more natural to Jefferson

> [t]hat ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition...[81]

In Jefferson's view, technological development in those countries that did not have patent systems seemed to be "as fruitful as England in new and useful devices."[82] He decided finally that

> the exclusive right to invention [is] given not of natural right, but for the benefit of society...[83]

As a patent board member he advocated free application of any new uses for a patented device rather than its reservation by license to the patent owner. Hence Jefferson also recognized the tension between exclusive

property rights and public access to knowledge and information. The Supreme Court addressed this tension in the Wheaton v. Peters case (1823), which set the terms for U.S. copyright protection for the next 150 years.[84]

The Wheaton v. Peters decision drew heavily from Donaldson v. Becket. It concluded that copyright was a statutory right that was 'secured' by following the formalities of registration, notice and deposit. The Court thereby rejected the notion that an inventor or author had a perpetual right at common law in the patent or copyright and the notion that certain legal rights of authors are retained even after publication. In reaching this decision the Court framed copyright litigation as a matter of protecting the copyright owner's exclusive rights to exploit and profit from effort and risk put into the work versus protecting public access to art, literature, inventions and other intellectual products.

By concluding that copyright was a statutory right of limited duration the Court struck against the notion of unlimited monopoly that a natural, perpetual right implied. Thus once the statutory period of protection expired the published, copyrighted works passed into the public domain. An author did retain the copyright at common law but only as long as the work was unpublished. This fact again highlights the central role of the publisher in bringing a work to the public, a process through which he or she takes control of the author's copyright privileges and comes to benefit most from legal protection.

The expanding scope of copyright

The dominant trends in the development of U.S. copyright law and

judicial interpretations were the extension of the duration of copyright protection, the application to new forms of artistic and literary creativity and expression, and the concentration of intellectual property in the hands of increasingly larger corporate entities. The first two trends produced acts that extended copyright to: "the arts of designing, engraving, and etching of historical and other prints;"[85] musical compositions;[86] performing rights for copyright owners of "dramatic compositions;"[87] photographs and negatives;[88] paintings, drawings, statues and models;[89] dramatizations, translations and importation;[90] "mechanical" musical recordings (i.e., piano rolls);[91] a term of 28 years duration initial protection with possibility of renewal for another 28 years;[92] "motion-picture photoplays" and other motion pictures;[93] and, so on. Congress and the courts have regularly had to revise copyright law as new forms of artistic and intellectual expression and means of dissemination proliferate. With these technological developments, authors and artists found new outlets for their creativity, while publishers and other owners of the means of communication and dissemination found new ways to make a profit. At the same time intellectual property rights continued to pass from individual inventors and creators to corporations and other large institutions and to become increasingly social in the process of production.

Noble's analysis of the "corporation as inventor" highlights the process of concentration of patent rights in the hands of major corporations as they steadily institutionalized research and development.[94] He shows how since 1790 inventors increasingly sold or licensed their patent rights in exchange for immediate payoffs from

corporate enterprises (not always on fair terms)[95] or in assigning them to the corporation as employee, "bartering his genius for a salary."[96]

> In addition, by means of patent control gained through purchase, consolidation, patent pools, and cross-licensing agreements, as well as by regulated patent production through systematic industrial research, the corporations steadily expanded their "monopoly of monopolies."[97]

Whereas in 1885 twelve percent of patents were obtained by corporations, the figure was up to 75% by 1950. AT&T increased its control from the original two Bell patents in the 1870s to 9,255 by 1935 through licensing agreements, mergers, purchases, and research.[98] After AT&T's divestiture of the Bell Operating Companies in January 1984, 30,000 managers were required to sign intellectual property agreements in which they gave over to the company rights to their inventions and promised not to disclose proprietary information. Building on Brock's analysis,[99] AT&T's actions here come as the result of the shift from barriers to entry based on government regulation to barriers or market advatages based on technology. Technological leads require control of standards and patents to remain effective, which also means controlling information and knowledge produced within the firm. International Business Machines Corp. owns 32,000 patents worldwide (9,000 U.S. patents and over 23,000 international ones) covering a vast range of high technology.[100] These patents are used to leverage other companies into granting patent rights in exchange for IBM patents. Higher licensing fees can give IBM an edge in price wars against rivals who use its patents. From these facts we can conclude with Babe and Winn that today

> the largest proportion of wealth is highly abstract and disassociated from both tangible objects and from the proprietor's own labour; this state of affairs is exemplified by the importance of financial instruments such as stocks, bonds, franchises, licenses and so

forth.[101]

Former U.S. Register of Copyrights, David Ladd, recognized what such concentration would mean for the production and dissemination of books. He believes that the copyright system remains purposeful as long as it "fosters daring, innovative and risk-taking publishers."[102]

> Without such publishers, authors are as mute as if they did not speak at all. Without them, authors do not, in fact, speak. Just as we are best served by many visions and visonaries speaking from and to the breadth of human experience, so also do we require a vibrant, heterogeneous, and dissonant community of publishers. And while this is of special importance in the areas of thought and political opinion, it is likewise crucial in the fine arts.[103]

He recognizes therefore the essential role of publishers and other media capitalists in bringing the creativity of individuals and teams of artists and writers to the public. He alerts us as well to what the implications of media concentration will be in terms of the range and diversity of media content. This is where the political economy of communications industries becomes central because of its focus on industry structure and ownership. Further research that links the economic structure of mass communications with the institution of intellectual property is therefore necessary.

ENDNOTES

1. Lyman Paterson, Copyright in Historical Perspective, Nashville: Vanderbilt University Press, 1968, p. 223.

2. Edward W. Ploman and L. Clark Hamilton, Copyright: Intellectual Property in the Information Age, London: Routledge & Kegan Paul, 1980, pp. 5-6.

3. Robert Oliver, Communication and Culture in Ancient India and China, Syracuse: Syracuse University Press, p. 2., as cited ibid., p.4.

4. Miguel Covarrubias, Island of Bali, Kuala Lampur: Oxford University Press/Indira, (first published in 1937), cited ibid., p. 4-5.

5. Op. cit., Ploman and Hamilton, pp. 141-2.

6. Ibid., p. 8.

7. John Feather, A History of British Publishing, London: Croom Helm, 1988, p. 1.

8. See Colin Clair, A Chronology of Printing, New York: Frederick A. Praeger, 1969 and Warren Chappell, A Short History of the Printed Word, New York: Alfred A. Knopf, 1970.

9. Elizabeth Eisenstein, The Printing Press as an Agent of Change: Communications and Cultural Transformation in Early-Modern Europe, Cambridge: Cambridge University Press, 1979.

10. Elizabeth L. Eisenstein, The Printing Revolution in Early Modern Europe, Cambridge: Cambridge University Press, 1983, p. 83-4.

11. Ibid., p. 84.

12. Op. cit, Feather, p. 8. Other sources for this history are: Frank A. Mumby, Publishing and Bookselling (5th Edition), Londdon: Jonathan Cape, 1974; Marjorie Plant, The English Book Trade (3rd Edition), London: George Allen & Unwin, Ltd., 1974.

13. Ibid., p. 13.

14. For example the Star Chamber Decree of 1586 limited the number of master printers to twenty-five.

15. Op. cit., Ploman and Hamilton, p. 10.

16. Op. cit., Feather, p. 25.

17. Op. cit., Ploman and Hamilton, p. 11-12.

18. Raymond Williams, The Long Revolution, New York: Columbia University Press, 1961, p. 162.

19. cited in Ibid., p. 161-2.

20. Op. cit., Eisenstein (1983), p. 84.

21. Thus Ploman and Hamilton write:

> In his Two Treatises on Civil Government, 1690, John Locke had postulated a theory of an intellectual property right in the author (p. 13;;

and similarly,

> John Locke's attempt to shift the rights of intellectual property from a statutory right to a naturally given right meant in practical terms a shift of the right from the publisher to the author (p. 17).

The recent Office of Technology Assessment report on intellectual property repeats the claim that

> "[i]n 1690, John Locke argued in his Two Treatises on Civil Government that the author has a natural right in his work since he had expended his own labor in creating it (U.S. Congress, Office of Technology Assessment, Intellectual Property Rights in an Age of Electronics and Information, Washington, D.C.: U.S. Government Printing Office, April 1986, p. 36).

22. C.B. Macpherson, The Political Theory of Possessive Individualism: Hobbes to Locke, Oxford: Oxford University Press, 1962; Thomas Hobbes, Leviathan, New York: Collier Books, 1962. Leviathan was first published in 1651.

23. John Locke, Two Treatises of Government, New York: Hafner Press, 1947, p. 134.

24. Locke says: "...a freeman makes himself a servant to another by selling him, for a certain time, the service he undertakes to do in exchange for wages he is to receive..." Ibid., p. 162. According to MacPherson this alienating of one's labor also meant that wage laborers could not be 'citizens,' for they could not be fully rational (accumulative of property) without any property but their own labor. Op. cit., p. 234.

25. Ibid., p. 136.

26. This passage states in entirety:

> From all which it is evident that, though the things of nature are given in common, yet man, by being master of himself and proprietor of his own person and the actions or labour of it, had still in himself the great foundation of property; and that which made up the greater part of what he applied to the support or comfort of his being, when invention and arts had improved the conveniences of life, was perfectly his own and did not belong in common to others (Ibid., p. 143).

27. Op. cit., Macpherson, p. 215.

28. Op. cit., Feather, p. 42.

29. Note that breaking up the monopoly in the book publishing industry is not the central cause bringing on the expiration of the Licensing Act, rather it is usually attributed to political exigency: a consensus could not be achieved between Tories and Whigs on the latitude of political control of licensing. But breaking up the government-sanctioned monopoly implied loss such control.

30. Ibid., p. 73.

31. 8 Anne C. 19 (1710).

32. I say "'explict' connection" because copyright has been used in subsequent times by governments as a means of censorship. The state of North Carolina, in the Act of February 3, 1786, resurrected the censorship connection to copyright; stating that nothing in this copyright act should be

> construed to encourage or protect any authors or publishers of books, maps or charts which may be dangerous to civil liberty, or to the peace or morals of society (U.S. Library of Congress, Copyright Office, Copyright Enactments, Bulletin No. 3 (Revised), Washington, D.C.: U.S. Government Printing Office, 1963, p,17).

A recent notorious case of censorship connected to copyright involves the book by Ariel Dorfman and Armand Mattelart, How to Read Donald Duck, that was barred by the U.S. Customs Office based on the Walt Disney Company's copyright infringement claim. See John Lawrence, "Donald Duck v. Chilean Socialism: A Fair Use Exchange," in J. Lawrence and B. Timburg, (eds.), Fair Use and Free Inquiry, Norwood, N.J.: Ablex, 1980, pp. 43-60.

Note also that government censorship did not end with the expiration of the licensing act as it took new forms such as stamp acts and the common law of seditious libel.

33. Op. cit., Ploman and Hamilton, p. 13.

34. Op. cit., Feather, p. 83.

35. Samuel Bowles and Richard Edwards, Understanding Capitalism: Competition, and Change in the U.S. Economy, New York: Harper and Row Publishers, 1985, p. 64.

36. Ibid., p. 64-5.

37. Ibid., p. 66-7.

38. Ibid., p. 66.

39. The 'work for hire' doctrine applies to peolple who are hired to write or work on a film for a salary or wage. In hiring out their labor they give up claim to ownership in the work they do.

40. Karl Marx and Friedrich Engels, Literature and Art, International Publishers: New York, 1947, p. 37.

41. Op. cit., Bowles and Edwards, p. 98. The new middle class consists of managers and supervisors who sell their labor time but at the same time do control the labor processes of others, while they themselves are controlled by the top executives who have the power to hire and fire them.

42. Don Dodson, "Ranks of Independent Doctors Shrinking in C-U," Champaign-Urbana News Gazette, July 29, 1988, p. C-1. This article reports that according to a 1985 American Medical Association survey one-third of the respondents were in groups practices, the remainder in solo or partnerships. In Champaign-Urbana, Illinois the number of independent doctors declined from 55 in 1980 to 35 in 1988. That gave group practices 87% of local doctors leaving only 13% independent.

43. Stefan Morawski, "Introduction," op. cit., Literature and Art, p. 19.

44. The framework for this analysis is based on Marx and Engels discussion of alienated labor in the Economic and Philosophic Manuscripts of 1844, see Robert C. Tucker (ed.), The Marx-Engels Reader, W.W. Norton & Co.: New York, 1978, pp. 66-125.

45. For elaborated discussion on professional media ideology see: Todd Gitlin, The Whole World is Watching, University of California Press: Berkeley, 1980; Peter Golding and Graham Murdock, "Idoelogy and the Mass Media: The Question of Determination," in M. Barrett et al. (eds.), Ideology and Cultural Reproduction, Croom Helm: London, 1979, pp. 198-225; Stuart Hall, "The Rediscovery of 'Ideology': Return of the Repressed in Media Studies," in M. Gurevitch et al. (eds.), Culture, Society and the Media, Methuen: London, 1982, pp. 56-90; Revolutionary Left Movement (MIR), "On Journalism and Objectivity," in A. Matterlart and S. Sieglaub (eds.), Communication and Class Struggle: Volume 1, International General: New York, 1979, pp. 130-35; and, Dan Schiller, "An Historical Approach to Objectivity and Professionalism in American News Reporting," Journal of Communication, Vol. 29, No. 24, Fall 1979, pp. 46-57.

46. Karl Marx and Friedrich Engels, The German Ideology, International Publishers: New York, 1981, p. 109.

47. Ibid., p. 108.

48. Op. cit., Williams, p. 237.

49. Ibid., p. 18.

50. Karl Marx and Friedrich Engels, On the Housing Question (1872), excerpted in op. cit., Marx and Engels, 1947, p. 73.

51. P. J. Proudhon, What is Property: An Inquiry Into the Principle of Right and Government, Dover Publications: New York, 1970, p. 395.

52. Ibid., p. 396.

53. Op. cit., Marx and Engels, 1947, p. 76, excerpt from the German Ideology.

54. This suggestion was made for artists in John Perreault, "Women Artists Are Also Worker-Artists," in Village Voice, Art Supplement, October 6, 1987, p. 10-12. It is appropriate to extend this to other artistic and literary professions where the employment and income situations are not that much different.

55. Sue Coe, a successful writer, artist and op-ed page illustrator, and who now makes a living from these activities, says she still habitually looks out of the corner of her eye at waitressing and office work ads (Nina Burleigh, "The Passionate Pen of Sue Coe," In These Times, July 20, 1988, p. 12).

56. 1981 Columbia University Study, quoted in Show Me Libraries, July 1984, p. 19. The study found that the average author's income was $5,000 a year with 10% earning more than $45,000 and 5% earning more than $80,000.

57. Ibid., p. 12.

58. Thomas I. Cook, "Introduction," in op. cit., Locke, p. xxxvii.

59. Ibid., p. xxxvii.

60. Miachael F. Schwartz, "The Author and Moral Rights," reprinted from Variety in Ben H. Weil and Barbara Polansky (eds.), Modern Copyright Fundamentals, Van Nostrand Reinhold Co.: New York, 1985, p. 394. The Lanham Act (15 U.S.C.A. Section 1051 et seq.), is a federal law enacted in 1947 to revise the U.S. trademark laws. With regard to moral rights the Act states that trademarks cannot consist of immoral, deceptive, or scandalous matters or falsely suggest a link with persons, living or dead, beliefs, institutions, or national symbols. See "Trademarks," The Guide to American Law: Everyone's Legal Encyclopedia, Vol. 10, St. Paul: West Publishing, 1984, pp. 96-103.

61. Op. cit., Copyright Enactments, Appendix, p. 140.

62. Ibid., p. 1.

63. Op. cit., Ploman and Hamilton, p. 15.

64. Op. cit., Copyright Enactments, p. 1.

65. Ibid., p. 4.

66. Ibid., p. 4.

67. Ibid., p. 10.

68. Ibid., p. 12, 14.

69. Massachusetts, South Carolina, North Carolina, Georgia and New York.

70. Alexander Hamilton, James Madison, and John Jay, The Federalist Papers, No. 43, The New American Library for World Literature: New York, 1961, pp. 271-272.

71. Article 8, Section 8, Clause 8.

72. Op. cit., Office of Technology Assessment (1986), p. 38, citing Bruce Bugbee, The Genesis of American Patent and Copyright Law, Public Affairs Press: Washington, DC, 1967, p. 126.

73. Letter to the Abbé Reynal, 1782, as quoted in Bruce Bugbee, Early American Law of Intellectual Property, 1960, p. 251.

74. See Eric Foner, Tom Paine and Revolutionary America, London: Oxford University Press, 1976.

75. Letter from James Madison to Thomas Jefferson, Oct. 17, 1788, as quoted in Op. cit., Bugbee, p. 130.

76. Act of May 31, 1790, First Congress, Second Session, Chapter 15, (1 Stat. 124), op. cit., Copyright Enactments, pp. 22-24.

77. Chapter 15, Section 5.

78. Op. cit., Ploman and Hamilton, p. 16.

79. Thomas Jefferson, The Portable Thomas Jefferson, Penguin Books: New York, p. 529.

80. Ibid., p. 530.

81. Ibid., p. 530.

82. Ibid., p. 530.

83. Ibid., p. 531.

84. Wheaton and Donaldson v. Peters et al., 8 Peters, 591.

85. Act of April 29, 1802, Seventh Congress, First Session, Chapter 35, April 29, 1802, Op. Cit., Copyright Enactments, pp. 24-26.

86. Act of February 3, 1831, Twenty-First Congress, Second Session, Chapter 16, ibid., pp. 27-31.

87. Act of August 18, 1856, Thirty-Fourth Congress, First Session, Chapter 169, (11 Stat. 138), ibid., p. 33.

88. Act of February 18, 1867, Thirty-Ninth Congress, Second Session, Chapter 43, ibid., p. 35-6.

89. Act of July 8, 1870, Forty-First Congress, Second Session, Chapter 230, Sections 35-111, ibid., p. 36-41.

90. Act of March 3, 1891, Fifty-First Congress, Second Session, Chapter 565, Sections 4952 and 4956, ibid., p. 49-50.

91. Act of March 4, 1909, Sixtieth Congress, Second Session, Chapter 320, Section 1(e), (35 Stat. 1075) ibid., p. 65.

92. Ibid., Section 23, ibid., p. 73.

93. Act of August 24, 1912, Sixty-Second Congress, Second Session, Chapter 356, Section 5, (37 Stat. 488), ibid., p. 87.

94. David Noble, America by Design: Science, Technology and the Rise of Corporate Capitalism, Knopf Publishing: New York, 1977 (Chapter 6: "The Corporation as Inventor," pp. 84-109).

95. The case of Lee DeForest is just one example. He sold his vacuum tube patent to AT&T in 1913 for a reported $250,000. DeForest was in a weak bargaining position since the uses to which the vacuum tube would be put, in telephone repeaters and radio, were closed to him due to patents held by AT&T, General Electric and the Marconi company. See Gerald W. Brock, The Telecommunications Industry, Harvard University Press: Cambridge, Mass., 1981, pp. 164-5.

96. Ibid., p. 87.

97. Ibid., p. 87.

98. Ibid., p. 87.

99. Brock argues that patent barriers were traded by AT&T in the mid-19tens for barriers based on government regulation. Op. cit., Brock.

100. Michael W. Miller, "IBM is Raising Licensing Fees on its Patents," Wall Street Journal, April 11, 1988, p. 2.

101. Robert E. Babe and Conrad Winn, Broadcasting Policy and Copyright Law, Department of Communications, Government of Canada, 1981, p. 26.

102. David Ladd, "The Harm of the Concept of Harm in Copyright," Journal of the Copyright Society U.S.A, Vol. 30, No. 5, 1983, pp. 421-432.

103. Ibid., p. 428.